

CHAPTER 3 PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

223—3.1(17A,22) Definitions. As used in this chapter:

“Agency” means the state archives unit within the society.

“Confidential record” means a record which is not available as a matter of right for examination and copying by members of the public under applicable provisions of the law. Confidential records include records or information contained in records that the agency is prohibited by law from making available for examination by members of the public, and records or information contained in records that are specified as confidential by Iowa Code section 22.7 or other provision of law, but that may be disclosed upon order of a court, the lawful custodian of the record, or by another person duly authorized to release the record. Mere inclusion in a record of information declared confidential by an applicable provision of the law does not necessarily make that entire record a confidential record.

“Custodian” means the agency or person lawfully delegated authority by the agency to act for the agency in implementing Iowa Code chapter 22.

“Open record” means a record other than a confidential record.

“Personally identifiable information” means information about or pertaining to an individual in a record which identifies the individual and which is contained in a record system.

“Record” means the whole or part of a “public record,” as defined in Iowa Code section 22.1, that is owned by or in the physical possession of the agency.

“Record system” means any group of records under the control of the agency from which a record may be retrieved by a personal identifier such as the name of an individual, number, symbol, or other unique retriever assigned to an individual.

223—3.2(17A,22) Statement of policy and scope.

3.2(1) The purpose of this chapter is to facilitate broad public access to open records. It also seeks to facilitate sound agency determinations with respect to the handling of confidential records and the implementation of the fair information practices Act. This agency is committed to the policies set forth in Iowa Code chapter 22; agency staff shall cooperate with members of the public in implementing the provisions of that chapter.

3.2(2) Scope of chapter. The provisions of this chapter apply to records which are in the custody of the state archivist in accord with Iowa Code section 303.12. Other materials created and held by the archives are subject to the public records and fair information practices rules of the department of cultural affairs, Iowa Administrative Code 221—Chapter 2.

223—3.3(17A,22) Request for access to records.

3.3(1) *Location of record.* A request for access to a record shall be directed to the State Archivist, State Historical Society of Iowa, Capitol Complex, Des Moines, Iowa 50319, (515)281-8875. If the location of the record is not known by the requester, the request shall be directed to the State Archivist, State Historical Society of Iowa, Capitol Complex, Des Moines, Iowa 50319, (515)281-8875. If a request for access to a record is misdirected, agency personnel shall promptly forward the request to the appropriate person within the agency.

3.3(2) *Office hours.* Open records shall be made available during all customary weekday office hours of the society. Records may be available for inspection on Saturdays if a request is placed by 12 noon on the preceding Friday.

3.3(3) *Request for access.* Requests for access to open records may be made in writing, in person, or by telephone. Requests shall identify the particular records sought by name or description in order to facilitate location of the record. Mail or telephone requests shall include the name, address, and telephone number of the person requesting the information. A person shall not be required to give a reason for requesting an open record.

3.3(4) *Response to requests.* Access to an open record shall be provided promptly upon request unless the size or nature of the request makes prompt access infeasible. If the size or nature of the re-

quest for access to an open record requires time for compliance, the custodian shall comply with the request as soon as feasible. Access to an open record may be delayed for one of the purposes authorized by Iowa Code section 22.8(4) or 22.10(4). The custodian shall promptly give notice to the requester of the reason for any delay in access to an open record and an estimate of the length of that delay and, upon request, shall promptly provide that notice to the requester in writing.

The custodian of a record may deny access to the record by members of the public only on the grounds that such a denial is warranted under Iowa Code sections 22.8(4) and 22.10(4), or that it is a confidential record, or that its disclosure is prohibited by a court order. Access by members of the public to a confidential record is limited by law and, therefore, may generally be provided only in accordance with the provisions of 223—3.4(17A,22), Iowa Administrative Code, and other applicable provisions of the law.

3.3(5) *Security of record.* No person may, without permission from the custodian, search or remove any record from agency files. Examination of agency records shall be supervised by the custodian or a designee of the custodian. Copying of agency records shall be provided by the custodian or a designee of the custodian. The requester shall protect the records from damage and disorganization.

3.3(6) *Copying.* A reasonable number of copies of an open record may be made in the agency's office unless reproduction is inappropriate due to the physical condition of the record or other physical considerations. If photocopy equipment is not available in the agency office where an open record is kept, the custodian shall arrange to have copies promptly made elsewhere.

3.3(7) *Fees.*

a. When charged. The agency may charge fees in connection with the examination or copying of records only if the fees are authorized by law. To the extent permitted by applicable provisions of the law, the payment of fees may be waived when the imposition of fees is inequitable or when a waiver is in the public interest.

b. Copying and postage costs. Price schedules for published materials and for photocopies of records supplied by the agency shall be prominently posted in the agency's reading rooms. Copies of records may be made by or for members of the public on agency photocopy machines or from electronic storage systems at cost as determined and posted in the agency reading rooms by the custodian. When the mailing of copies of records is requested, the actual costs of such mailing may also be charged to the requester.

c. Supervisory fee. An hourly fee may be charged for actual agency expenses in supervising the examination and copying of requested records when the supervision time required is in excess of one-half hour. The custodian shall prominently post in the agency reading rooms the hourly fees to be charged for supervision of records during examination and copying and the hourly fees to be charged for search for requested records when the search time required is in excess of one-half hour. The hourly fee shall not be in excess of the hourly wage of an agency clerical employee who ordinarily would be appropriate and suitable to perform this supervisory function.

d. Advance deposits.

(1) When the estimated total fee chargeable under this subrule exceeds \$25, the custodian may require a requester to make an advance payment to cover all or a part of the estimated fee.

(2) When a requester has previously failed to pay a fee chargeable under this subrule, the custodian may require advance payment of the full amount of any estimated fee before the custodian processes a new request for that requester.

223—3.4(17A,22) Access to confidential records. Under Iowa Code section 22.7 or other applicable provisions of law, the lawful custodian may disclose certain confidential records to one or more members of the public. Other provisions of law authorize or require the custodian to release specified confidential records under certain circumstances or to particular persons. In requesting the custodian to permit the examination and copying of such a confidential record, the following procedures apply and are in addition to those specified for requests for access to records in rule 223—3.3(17A,22), Iowa Administrative Code.

3.4(1) *Proof of identity.* A person requesting access to a confidential record may be required to provide proof of identity or authority to secure access to the record.

3.4(2) *Requests.* The custodian may require a request to examine and copy a confidential record to be in writing. A person requesting access to such a record may be required to sign a certified statement or affidavit enumerating the specific reasons justifying access to the confidential record and to provide any proof necessary to establish relevant facts.

3.4(3) *Notice to subject of record and opportunity to obtain injunction.* After the custodian receives a request for access to a confidential record, and before the custodian releases such a record, the custodian may make reasonable efforts to notify promptly any person who is a subject of that record, is identified in that record, and whose address or telephone number is contained in that record. To the extent such a delay is practicable and in the public interest, the custodian may give the subject of such a confidential record to whom notification is transmitted a reasonable opportunity to seek an injunction under Iowa Code section 22.8, and indicate to the subject of the record the specific period of time during which disclosure will be delayed for that purpose.

3.4(4) *Request denied.* When the custodian denies a request for access to a confidential record, the custodian shall promptly notify the requester. If the requester indicates to the custodian that a written notification of the denial is desired, the custodian shall promptly provide such a notification that is signed by the custodian and includes:

- a.* The name and title or position of the custodian responsible for the denial; and
- b.* A citation to the provision of law vesting authority in the custodian to deny disclosure of the record and a brief statement of the reasons for denial to this requester.

3.4(5) *Request granted.* When the custodian grants a request for access to a confidential record to a particular person, the custodian shall notify that person and indicate any lawful restrictions imposed by the custodian on that person's examination and copying of the record.

223—3.5(17A,22) Requests for treatment of a record as a confidential record and its withholding from examination. The custodian may treat a record as a confidential record and withhold it from examination only to the extent that the custodian is authorized by Iowa Code section 22.7, another applicable provision of law, or a court order, to refuse to disclose that record to members of the public.

3.5(1) *Persons who may request.* Any person who would be aggrieved or adversely affected by disclosure of a record and who asserts that Iowa Code section 22.7, another applicable provision of law, or a court order, authorizes the custodian to treat the record as a confidential record, may request the custodian to treat that record as a confidential record and to withhold it from public inspection.

3.5(2) *Request.* A request that a record be treated as a confidential record and be withheld from public inspection shall be in writing and shall be filed with the custodian. The request must set forth the legal and factual basis justifying such confidential record treatment for that record, and the name, address, and telephone number of the person authorized to respond to any inquiry or action of the custodian concerning the request. A person requesting treatment of a record as a confidential record may also be required to sign a certified statement or affidavit enumerating the specific reasons justifying the treatment of that record as a confidential record and to provide any proof necessary to establish relevant facts. Requests for treatment of a record as such a confidential record for a limited time period shall also specify the precise period of time for which that treatment is requested.

A person filing such a request shall, if possible, accompany the request with a copy of the record in question from which those portions for which such confidential record treatment has been requested have been deleted.

3.5(3) *Failure to request.* Failure of a person to request confidential record treatment for a record does not preclude the custodian from treating it as a confidential record. However, if a person who has submitted business information to the agency does not request that it be withheld from public inspection under Iowa Code sections 22.7(3) and 22.7(6), the custodian of records containing that information may proceed as if that person has no objection to its disclosure to members of the public.

3.5(4) *Timing of the decision.* A decision by the custodian with respect to the disclosure of a record to members of the public may be made when a request for its treatment as a confidential record that

is not available for public inspection is filed, or when the custodian receives a request for access to the record by a member of the public.

3.5(5) *Request granted or deferred.* If a request for such confidential record treatment is granted, or if action on such a request is deferred, a copy of the record from which the matter in question has been deleted and a copy of the decision to grant the request or to defer action upon the request will be made available for public inspection in lieu of the original record. If the custodian subsequently receives a request for access to the original record, the custodian will make reasonable and timely efforts to notify any person who has filed a request for its treatment as a confidential record that is not available for public inspection of the pendency of that subsequent request.

3.5(6) *Request denied and opportunity to seek injunction.* If a request that a record be treated as a confidential record and be withheld from public inspection is denied, the custodian shall notify the requester in writing of that determination and the reasons therefor. On application by the requester, the custodian may engage in a good faith, reasonable delay in allowing examination of the record so that the requester may seek injunctive relief under the provisions of Iowa Code section 22.8, or other applicable provision of law. However, such a record shall not be withheld from public inspection for any period of time if the custodian determines that the requester had no reasonable grounds to justify the treatment of that record as a confidential record. The custodian shall notify requester in writing of the time period allowed to seek injunctive relief or the reasons for determination that no reasonable grounds exist to justify the treatment of that record as a confidential record. The custodian may extend the period of good faith, reasonable delay in allowing examination of the record so that the requester may seek injunctive relief only if no request for examination of that record has been received, or if a court directs the custodian to treat it as a confidential record, or to the extent permitted by another applicable provision of law, or with the consent of the person requesting access.

223—3.6(17A,22) Procedure by which additions, dissents, or objections may be entered into certain records. Except as otherwise provided by law, a person may file a request with the custodian to review, and to have a written statement of additions, dissents, or objections entered into, a record containing personally identifiable information pertaining to that person. However, this does not authorize a person who is the subject of such a record to alter the original copy of that record or to expand the official record of any agency proceeding. Requester shall send the request to review such a record or the written statement of additions, dissents, or objections to the State Archivist, State Historical Society of Iowa, Capitol Complex, Des Moines, Iowa 50319. The request to review such a record or the written statement of such a record of additions, dissents, or objections must be dated and signed by requester and shall include the current address and telephone number of the requester or the requester's representative.

223—3.7(17A,22) Consent to disclosure by the subject of a confidential record. To the extent permitted by any applicable provision of law, a person who is the subject of a confidential record may have a copy of the portion of that record concerning the subject disclosed to a third party. A request for such a disclosure must be in writing and must identify the particular record or records that may be disclosed, and the particular person or class of persons to whom the record may be disclosed (and, where applicable, the time period during which the record may be disclosed). The person who is the subject of the record and, where applicable, the person to whom the record is to be disclosed, may be required to provide proof of identity. (Additional requirements may be necessary for special classes of records.) Appearance of counsel before the agency on behalf of a person who is the subject of a confidential record is deemed to constitute consent for the agency to disclose records about that person to the person's attorney.

223—3.8 Reserved.

223—3.9(17A,22) Disclosure without the consent of the subject.

3.9(1) Open records are routinely disclosed without the consent of the subject.

3.9(2) To the extent allowed by law, disclosure of confidential records may occur without the consent of the subject.

223—3.10 Reserved.

223—3.11(17A,22) Consensual disclosure of confidential records.

3.11(1) *Consent to disclosure by a subject individual.* To the extent permitted by law, the subject may consent in writing to agency disclosure of confidential records as provided in rule 223—3.7(17A,22), Iowa Administrative Code.

3.11(2) *Complaints to public officials.* A letter from a subject of a confidential record to a public official which seeks the official's intervention on behalf of the subject in a matter that involves any of the several agencies may to the extent permitted by law be treated as an authorization to release sufficient information about the subject to the official to resolve the matter.

223—3.12(17A,22) Release to the subject.

3.12(1) The subject of a confidential record may file a written request to review confidential records about that person as provided in rule 223—3.6(17A,22), Iowa Administrative Code. The agency is not required to release the following items to the subject:

a. The identity of a person providing information to the agency which developed the records where the information is authorized to be held confidential pursuant to Iowa Code section 22.7(18) or other provisions of law;

b. Work products of any attorney or other privileged record;

c. Peace officers investigative reports except as provided by Iowa Code section 22.7(5); and

d. Other confidential records as authorized by law.

3.12(2) If a confidential record involves multiple subjects, the agency shall take reasonable precautions to protect confidential information relating to all subjects.

223—3.13(17A,22) Availability of records.

3.13(1) *General records.* Agency records are open for public inspection and copying unless otherwise provided by rule or law as designated by the transferring agency.

3.13(2) *Confidential records.* This agency has custody of records which other state agencies have created. The agencies which create records may identify records as confidential when transferring the records to archives. Thus, some agency records identified by the fair information practices administrative rules of the several state agencies may be withheld from public inspection.

3.13(3) *Authority to release confidential records.* The custodian may have discretion to disclose some confidential records which are exempt from disclosure under Iowa Code section 22.7 or other provisions of law. Any person may request permission to inspect records withheld from inspection under a statute which authorizes limited or discretionary disclosure as provided in subrule 3.4(3), Iowa Administrative Code. If the agency initially determines that it will release such records, the agency may, where appropriate, notify interested parties and withhold the records from inspection as provided in subrule 3.4(3).

223—3.14(17A,22) Personally identifiable information. The agency shall maintain record systems created by other state agencies which have been determined by the state records commission to be of enduring value in accord with Iowa Code section 303.12. Record systems containing personally identifiable information shall be identified by the state agency creating the record system at the time that the record system is transferred to the state archives.

223—3.15(17A,22) Other records. The agency may maintain groups of records in addition to the system identified in rule 223—3.1(17A,22), Iowa Administrative Code. These records may contain

confidential information as noted in rule 223—3.13(17A,22), Iowa Administrative Code. These record systems are currently identified in the fair information practices rules of the several state agencies and the state records management manual.

223—3.16(17A,22) Data processing systems. Data processing systems deemed to be of enduring value in accord with Iowa Code section 303.12 may be held in the agency. Those data processing systems which permit the comparison of personally identifiable information in one record system with personally identifiable information in another record system are currently identified in the fair information practices rules of the several state agencies.

223—3.17(17A,22) Applicability.

3.17(1) This chapter shall apply only to records which are in the custody of the state archivist in accord with Iowa Code section 303.12.

3.17(2) Determination of rights of access to records which have exceeded their period of administrative value as determined by the state records commission and are in the custody of the state archivist shall be governed by this chapter. Determination of rights of access to records for which the period of administrative value has not been determined by the state records commission but which are 30 years of age or older and are in the custody of the state archivist shall be governed by this chapter.

3.17(3) Determination of rights of access to records which have not exceeded their period of administrative value as determined by the state records commission, but are in the possession of the state archivist, shall be governed by the regulations of the agency which developed the records. Determination of rights of access to records for which the period of administrative value has not been determined by the state records commission, but which do not exceed 30 years of age, shall be governed by the regulations of the agency which developed the records.

3.17(4) This chapter shall not be construed to:

- a.* Require the agency to index or retrieve records which contain information about individuals by that person's name or other personally identifiable information;
- b.* Apply to records which are developed by the archives, or any other bureau, of the society unless those records are housed in the archives as records having enduring value in accord with Iowa Code section 303.12; or
- c.* Govern the maintenance or disclosure of, notification of or access to, records in the possession of agency which are governed by the regulations of another agency.

These rules are intended to implement Iowa Code sections 22.11 and 303.12 to 303.15.

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